

The Administrative Law Judge (ALJ) found claimant has a 6.25 percent impairment to her right hand. The ALJ also found claimant has a 13 percent impairment of function to her left shoulder. In making this finding, the ALJ adopted the opinion of Dr. Mark Melhorn, the treating physician, over that of Dr. Paul Stein, who performed a court-ordered independent medical examination (IME) of the claimant.

The respondent requests review of the nature and extent of claimant's disability. Respondent does not take issue with the award of 6.25 percent impairment to claimant's right hand. Respondent, however, believes Dr. Stein's impairment rating of 5-6 percent impairment to claimant's left shoulder is more credible than the 13 percent award of Dr. Melhorn. Respondent claims Dr. Stein's rating demonstrated claimant's improved condition since the time Dr. Melhorn gave her an impairment rating. Dr. Stein's examination of claimant was approximately eight months after her shoulder surgery as opposed to Dr. Melhorn's examination, which was only three months after claimant's shoulder surgery. Respondent argues, in the alternative, that the impairment ratings of Dr. Melhorn and Dr. Stein should be averaged.

Claimant argues the ALJ's award should be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant is employed at Wesley Medical Center as a licensed practical nurse in labor and delivery. Her duties include scrubbing for surgeries, cleaning, stocking, and transferring patients. In July 2002, claimant had a problem with the trigger finger of her right hand locking. Surgery was performed on her hand in February 2003. In June 2003, claimant was injured again when a patient grabbed her. The patient had been given an epidural block, and claimant was turning her to put her onto a bed. Claimant's arms were behind the patient to stabilize her when the patient became startled and grabbed claimant's arm and pulled it. Claimant immediately felt excruciating pain in the left side of her neck into her left arm and had difficulty lifting her left arm. Claimant was eventually referred to Dr. Melhorn for treatment of her shoulder.

The records of Dr. Melhorn were admitted into the record by stipulation. Claimant's hand was rated by Dr. Melhorn, who gave her a 6.25 percent disability to her right hand. Claimant was examined by Dr. Pedro Murati; however, Dr. Murati's report was not entered into evidence. The ALJ ordered an IME performed by Dr. Stein. Dr. Stein did not evaluate claimant's right hand, only her left shoulder. The ALJ accepted the testimony of Dr. Melhorn and awarded claimant a 6.25 percent impairment to her hand. The Board affirms this award.

Dr. Melhorn first saw claimant in relation to her left shoulder on February 5, 2004, at which time he diagnosed her with a left shoulder rotator cuff tear. Surgery was performed on February 23, 2004, to repair the shoulder. Dr. Melhorn examined claimant on May 3, 2004. His final report indicated that in his opinion, claimant was impaired due to amputation, abnormal motion, and ankylosis, which usually includes impairment due to pain and discomfort and loss of sensation. Dr. Melhorn's report also indicated claimant

had loss of strength in her shoulder and impairment to the level of the skin. Using the AMA *Guides*<sup>1</sup>, Dr. Melhorn gave the claimant a permanent partial impairment rating to the left upper extremity of 13 percent.

Dr. Stein examined the claimant's left shoulder on October 1, 2004. Dr. Stein's examination of claimant's left shoulder found no measurable significant loss of range in the shoulder in any single direction. Dr. Stein found claimant had some difficulty placing the left hand behind her back. Because of this, he recommended a 3-4 percent impairment to the left shoulder. Dr. Stein also found some residual left rotator cuff weakness of a mild degree. Using the AMA *Guides*, he rated this motor loss at a 2 percent impairment to the left upper extremity. Combining the two ratings, Dr. Stein gave the claimant a 5-6 percent permanent partial impairment to the left shoulder.

At the December 23, 2004, Regular Hearing, claimant's shoulder was still symptomatic.

Q. Tell the Judge how your left shoulder function has been affected.

A. I'm not able to reach out to the side or above my head. If I do, I like crawl up a wall with my arm. If I do happen to not think about it and try to reach for something, my arm will automatically just drop.

Q. How about your ability to lift your left arm above your shoulder level?

A. Not unless—I really have to think about it.

Q. Even out to the front, for instance?

A. Out to the front or to the side.<sup>2</sup>

This testimony indicates that claimant's shoulder has not improved as much as Dr. Stein's report suggests, but rather remains relatively consistent with the final examination findings by Dr. Melhorn. Accordingly, the Board affirms the ALJ's award of a 13 percent loss of use of the left shoulder.

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge John D. Clark dated March 24, 2005, is affirmed.

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<sup>1</sup>American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

<sup>2</sup>R.H. Trans. at 12-13.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Robert R. Lee, Attorney for Claimant  
P. Kelly Donley, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director